



An  
Bord  
Pleanála

## Inspector's Report

### ABP-314343-22

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<b>Development</b>	Construct a goods intake building and associated site works.
<b>Location</b>	Clash Industrial Estate, Tralee, Co Kerry.
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	22309
<b>Applicant</b>	Bio Atlantis Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse permission
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Bio Atlantis Ltd.
<b>Observers</b>	None
<b>Date of Site Inspection</b>	2/5/2023
<b>Inspector</b>	Siobhan Carroll

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## 1.0 Site Location and Description

- 1.1. The appeal site is located within the Clash Industrial Estate in Tralee, Co. Kerry. Clash Industrial Estate is located to the north-east of Tralee circa 2km from the town centre.
- 1.2. Clash Industrial Estate is located to the east of Clash Road. It contains a mix of commercial and industrial uses. They include commercial premises which provide hardware, tool hire, tyres, printing and signage, packaging, joinery, security, plumbing supply and cleaning services. Other companies within the industrial estate provide steel related services and products, a scrapyards and marine biotechnology products.
- 1.3. The appeal site has an area of 11.578 hectares it contains the premises and headquarters of BioAtlantis. BioAtlantis is marine biotechnology company which produces naturally derived compounds from marine and terrestrial sources including seaweed to aid plant, animal and human development.
- 1.4. There is housing to the south of Clash Industrial Estate located off Ballinorig Road. Fountain Court a housing estate containing a mix of detached, semi-detached and terraced dwellings is located 119m to the south of the appeal site at the closest point. The rail line which terminates at Tralee Casement Station is situated immediately to the north of the Fountain Court estate.
- 1.5. There is further housing to the east of the appeal site at Ballinorig Road. At the closest point this is situated 60m from the appeal site.

## 2.0 Proposed Development

- 2.1. Permission is sought for the construction of a goods intake building and associated works. The proposed building has a floor area of 435sq m.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The Planning Authority refuse permission for the following reason.

1. Having regard to the information submitted in support of the planning application, the Planning Authority is not satisfied that the proposed development will not generate emissions which would cause environmental pollution, would seriously injure the amenities of residential properties in the vicinity and would, therefore, be contrary to the proper planning and development of the area.

### 3.2. **Planning Authority Reports**

#### 3.2.1. Planning Reports

The Planning Authority sought further information in relation to the following;

1. The applicant is requested to address the following issues raised by the Environment Section:

The applicant is requested to provide additional information on the following:

- (a) List of goods proposed to be taken into the building along with quantities of same.
- (b) What are the uses for the goods proposed to be taken into the building?
- (c) Is it proposed to take in raw seaweed into the building?
- (d) Is it proposed to store raw seaweed in the building?

The Planning Authority sought clarification in relation to the following;

1. The applicant is requested to address the following issues raised by the Environment Section:

The applicant is requested to provide further clarification on the following:

- (a) What type of marine and terrestrial products are proposed to be taken into the building?
- (b) Is it proposed to process seaweed in the proposed building, the further information point no. 4 states that mechanically chopping and washing will take place. Will the seaweed processing (mechanically chopping and washing) take place in the proposed building or in the existing building?

(c) Should it be proposed to process seaweed in the building, the applicant is requested to provide information on how it is proposed to handle wash water likely to be generated in the proposed building.

(d) Provide justification that the processes likely to take place in the proposed building will not be odorous.

3.2.2. Planning report dated 18/7/22: The issue of possible odour emissions generated by the proposed development was raised in the further information and subsequent request for clarification of further information pursuant to reports submitted to the planning department by the Environment Department. The responses from the applicant do not satisfactorily address the potential odour issue and, consequently, a recommendation to approve the application cannot be made. The potential odour issue requires more comprehensive engagement between the applicant and the Environment Department so as to ensure that the Council is satisfied that the proposed development will not generate emissions that give rise to air pollution and cause nuisance which would impact on the amenities of residential properties in the vicinity.

3.2.3. Other Technical Reports

3.2.4. County Archaeologist – There are no recorded monuments listed in the Record of Monuments & Places in proximity to the proposed development site, which has been previously disturbed. No mitigation is required.

3.2.5. Fire Authority – Fire Safety Certificate and Disability Access Certificate is required.

3.2.6. Environment Section: reported dated 10/5/22 – Further information requested.

3.2.7. Environment Section: reported dated 14/6/22 – Clarification of Further information requested.

3.2.8. Environment Section: reported dated 13/7/22 – The Environment Section have reviewed the planning application documentation on the iPlan system including the further information response and the clarification of the further information response received by the Planning Authority along with conducting a site visit. We note that it is proposed to take in raw seaweed into this goods intake building and carry out some preliminary processing of the raw seaweed such as chopping and washing prior to the transfer of the raw seaweed to the main building. This is a change to the

current process of taking chopped dried seaweed to the production building. We have concerns that the proposed activities at the proposed goods intake building may pose an additional odour risk from the facility. We sought some details in relation to odour in both our further information request and our clarification on the further information request. Notwithstanding, the information provided in both the further information and clarification on further information responses, we feel that the potential odour issue from the proposed development has not been addressed satisfactorily. On that basis, we are not in a position to recommend approval on the application.

### **3.3. Prescribed Bodies**

3.3.1. Irish Water – No objection.

3.3.2. Inland Fisheries Ireland – The site is adjacent to the Manor stream, tributary of the River Lee. A Salmonid River. This tributary is a vital spawning and nursery watercourse for Salmonids. The following applies – There should be no interference, culverting, realignment or modification of the Manor stream adjacent to this site. Buffer zones to be retained and incorporated if not present. Machinery movements alongside any waters should be prohibited. No interference of culverting of any watercourses not identified on an ISO map. Any proposal to affect the watercourse, be clearly stated and agreed with IFI. Agreed measures to be included as conditions of planning.

### **3.4. Third Party Observations**

3.4.1. The Planning Authority received no submissions/observations in relation to the application.

## **4.0 Planning History**

4.1.1. **Reg. Ref. 22/310** – Permission was granted to construct New ESB Substation with associated drainage on the eastern side of the existing industrial facility. Permission was granted for a change of use of part of the industrial building to a warehouse for the maturation of whiskey including the construction of two personnel doors and one roller shutter door on the north western elevation of the building.

- 4.1.2. **Reg. Ref. 201055** – Permission was granted for change of use of circa 3,308sq m on ground floor from “weaving plant for cloth” to corrosion protection and export packaging production with associated offices, laboratories, fire escapes, external car parking and ancillary site works.
- 4.1.3. **Reg. Ref. 17552** – Permission was granted for material change of use from “weaving plant for cloth” to processing of seaweed and production of seaweed extracts.
- 4.1.4. **Reg. Ref. 16597** – Permission was refused for material change of use from weaving plant for cloth to processing of seaweed and production of seaweed products at the existing facility.
- 4.1.5. **Reg. Ref. 15665** – Permission was refused for material change of use from weaving plant for cloth to processing of seaweed and production of seaweed products at the existing facility.
- 4.1.6. **Reg. Ref. 15138** – Permission was granted to raise a section of roof and construct a chimney stack at the south east corner of an existing industrial facility.

## 5.0 Policy Context

### 5.1. Kerry County Development Plan 2022-2028

- 5.1.1. The Tralee Town Development Plan 2009-2015 (as extended and varied) is incorporated into the Kerry County Development Plan 2022-2028.
- 5.1.2. The site is zoned Objective ‘M4’ – Built Up Area on the Tralee Town zoning map. The Objective is to provide for a mix of land uses which may have existing buildings in place, brownfield lands and undeveloped greenfield lands within the development boundary.
- 5.1.3. Volume Six of the Development Plan contains a section which refers to Land-Use Zoning.
- 5.1.4. Section 1.3.2 refers to Development in Existing Residential/Built Up Areas(R2/M2/M4) – It is the policy of the Planning Authority to protect and improve existing/developed/residential areas and to provide facilities and amenities incidental to those areas.

- 5.1.5. While many areas are zoned M4 Built Up and many uses are “open to consideration” the council shall have regard to the established uses within the area. It is the policy of the Local Authority to facilitate development that supports in general the primary land use of the surrounding existing built up area. Development that does not support or threatens the vitality or integrity of the primary use of these existing built up areas shall not be permitted.
- 5.1.6. Chapter 9 refers to Economic Development
- 5.1.7. Strategic Economic Objective – KCDP 9-9 - It is an objective of the Council to optimise the amount of employment growth and enterprise creation across all economic sectors and ensure that growth is distributed in a sustainable manner across the County in accordance with the Settlement Strategy.
- 5.1.8. KCDP 9-80 - It is an objective of the Council to: Promote the growth of the manufacturing sector in Kerry by responding to the varying needs and requirements of the different components within the sector and by supporting the development of high-quality built environments offering a range of building sizes and formats, supported by the targeted provision of necessary infrastructure.

## **5.2. Natural Heritage Designations**

- 5.2.1. Ballyseedy Wood SAC (Site Code 002112) is located 1.5km to the south of the appeal site.
- 5.2.2. Tralee Bay Complex SPA (Site Code 004188) is located 2.8km to the east of the appeal site.
- 5.2.3. Tralee Bay and Magherees Peninsula, West to Cloghane SAC (Site Code 002070) is located 3km to the east of the appeal site.
- 5.2.4. Stack’s to Mullaghareik Mountains, West Limerick Hills and Mount Eagle SPA (Site Code 004161) is located 4.6km to the east of the appeal site.

## **5.3. EIA Screening**

- 5.3.1. The proposal entails the construction of a goods intake building with a floor area of 435sq m and associated site works at the BioAtlantis Ltd. facility at Clash Industrial



Estate, Tralee, Co Kerry. The operations at the BioAtlantis Ltd facility comprise the following:

- Intake and washing of seaweed.
- Chopping of seaweed
- Extraction of seaweed extracts
- Decanting
- Clarifying
- Purification
- Evaporation
- Formulation
- Drying of seaweed and seaweed extracts
- Packaging of products
- Laboratory
- Storage of products.

5.3.2. The processes involved at the facility as detailed above result in the production of natural compounds, extracted from renewable marine and terrestrial resources, primarily from seaweed to reduce stress in crops, animals and humans by strengthening natural defence systems. The operations at the facility do not come with the provisions of Part 1 of Schedule 5 of the Planning and Development Regulations 2001 (as amended).

5.3.3. Having regard to the nature and scale of the proposed development comprising the construction of an intake building at the existing BioAtlantis Ltd. facility at Clash Industrial Estate there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required. See Appendix 2 attached to this Report for the preliminary examination.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

A first party appeal has been submitted by Lynch & Associates on behalf of the applicant BioAtlantic Ltd. The issues raised are as follows;

- This facility has already received planning permission for the processing of seaweed in 2018 under PA Reg. Ref. 17/552.
- It is stated that it was always the intention to process both dry seaweed and fresh seaweed in the facility as part of that planning application. They state that the Planning Authority were informed of the odours that would be produced by the fresh seaweed.
- The facility is now operating a number of years and it was decided to mechanise further the raw seaweed intake. Therefore, it was proposed to construct a new building where lorries would drop off the fresh seaweed in bags. Which would be then chopped and washed prior to being transported into the Production Facility which already has planning permission.
- The Planning Authority sought further information in relation to the application. Representatives of BioAtlantis Ltd and Lynch & Associates met with representatives of the Planning Department of Kerry County Council to discuss the application. These discussions included the matter of the processing of delivering the fresh seaweed and the chopping and washing of same. The appellants state that there were no concerns raised at that stage in relation to the emissions from this new building that would cause air pollution or odours.
- The queries raised in the request for further information were replied to in a response dated 7<sup>th</sup> June 2022. A second request for further information was received from the Planning Authority on the 17<sup>th</sup> of June 2022 and a response to it was provided in a letter dated the 21<sup>st</sup> of June 2022.
- The appellant state that all the queries were answered. They suggest that if they were further contacted, they would have submitted the information Kerry

County Council previously received with the original application in relation to the raw seaweed.

- It is considered that Kerry County Council Environment Department made their decision on the basis that they felt there was a potential odour issue, even though they did not give any technical reasons for this assumption. The appellants note that they quoted no odour criteria for which they made this assumption.
- It is stated that if Kerry County Council were not satisfied with the response in respect of the odour, they could have imposed a condition where they could have set out the parameters they required in respect of this odour.
- The appeal includes page no. 15 of 27 no. pages of an Odour Analysis report compiled by Odournet which was previously given to Kerry County Council where they state that the washing and chopping activity only produces a figure of 315 oue/s which they state is so small it is not applicable. Therefore, the appellants state that there is no obvious reason why Kerry County Council would suggest that this New Intake Facility could cause any odour problem.
- The appellant requests that the Board take into consideration the issues set out in the appeal, particularly as it is restricting them in carrying out production of the processing of fresh seaweed in this facility which was always envisaged.

## **6.2. Planning Authority Response**

- None received.

## **7.0 Assessment**

The main issues in this appeal are those raised in the grounds of the appeal and it is considered that no other substantive issues arise. Appropriate Assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Impact on residential amenity
- Appropriate Assessment

## **7.1. Impact on residential amenity**

- 7.1.1. The proposed development comprises the construction of a new goods intake building to serve the existing facility operated by BioAtlantis. This entails the construction of a 435sq m to the southern side of the existing premises. The proposed building would be used to receive deliveries of raw seaweed. The building would also be used to carry out some preliminary processing of the raw seaweed such as chopping and washing prior to the transfer of the raw seaweed to the main building.
- 7.1.2. The final report of the Planning Officer dated 18/7/22, stated that the basis on the information submitted in support of the planning application including in response to the request for further information and the request for clarification for further information did not satisfactorily address the potential odour issue. It was stated in the report that the potential odour issue requires more comprehensive engagement between the applicant and the Environment Department so as to ensure that the Council is satisfied that the proposed development will not generate emissions that give rise to air pollution and cause nuisance which would impact on the amenities of residential properties in the vicinity. Accordingly, permission was refused on that basis.
- 7.1.3. The first party appeal set out their appeal that the BioAtlantis facility received planning permission for the processing of seaweed in 2018 under Reg. Ref. 17/552. They submit that it was always the intention to process both dry seaweed and fresh seaweed in the facility as part of that planning application. They state that the Planning Authority were informed of the odours that would be produced by the fresh seaweed. The first party set out that the new goods intake building is required in order to facilitate the mechanised intake of raw seaweed. The proposed building would service the drop off by lorries of fresh seaweed in bags and the building would also be used for the chopping and washing of the fresh seaweed prior to being transported into the Production Facility.

- 7.1.4. The first party state in the appeal that the Planning Authority did not provide a technical reasons in relation to refusal issued and that if Kerry County Council were not satisfied with the response in respect of the odour, they could have imposed a condition where they could have set out the parameters they required in respect of this odour. The appeal includes a page from an Odour Analysis report which was produced by Odournet. The first party state that the report was previously given to Kerry County Council. They submit that the odour that the washing and chopping activity generates is a figure of 315 oue/s which they state is so small it is not applicable.
- 7.1.5. In relation to the location of the proposed goods intake building it is situated immediately to the south of the existing building. I note that it would be situated circa 148m from closest dwelling to the south in the Fountain Court estate and that it would located circa 124m from closest dwelling on Ballinorig Road to the south. The closest dwelling to the west of the proposed building would be circa 158m away. While, I note the point made by the first party in respect of the Odour Analysis report provided under a previous planning application, I would also note that this analysis refers to the previously permitted building and it does not refer to the currently proposed building goods intake building which would be located closer to the residential properties to the south and east of the appeal site. The proposed development would entail both the delivery of raw seaweed to the new building and also the washing and chopping of the raw seaweed in the building.
- 7.1.6. The report of the Environment Section of the Council dated the 13/7/22 states that they reviewed all documentation in relation to the application including the further information response and the clarification of the further information response received by the Planning Authority and they also carried out a site visit. The report noted that it is proposed to take in raw seaweed into the goods intake building and carry out some preliminary processing of the raw seaweed such as chopping and washing prior to the transfer of the raw seaweed to the main building. The report highlighted that this represents a change to the current process of taking chopped dried seaweed to the production building. Therefore, it was stated in the report that the Environment Section have concerns that the proposed activities at the proposed goods intake building may pose an additional odour risk from the facility. It was concluded in the report that notwithstanding, the information provided in both the

further information and clarification on further information responses, that the potential odour issue from the proposed development has not been addressed satisfactorily.

7.1.7. Having regard to the report of the Environment Section dated 13/7/22, I would note that the proposed development would entail the receipt of raw seaweed into the goods intake building and the carrying out of some preliminary processing of the raw seaweed including chopping and washing prior to its transfer in to the main building. As highlighted in the report of the Environment Section this would represent a change to the current process of taking chopped dried seaweed to the production building and therefore, they had concerns that the proposed activities at the proposed goods intake building may pose an additional odour risk from the facility and they considered that the matter of odour generation was not satisfactorily addressed notwithstanding the information provided by the applicant on foot of the request for further information and clarification of further information.

7.1.8. Accordingly, taking a precautionary approach, while I would note the case made by the first party in respect of the proposal, I would concur with the Planning Authority that the proposed development would represent a change to the current process of taking chopped dried seaweed to the production building and the proposed activities at the proposed goods intake building may pose an additional odour risk. Furthermore, I note the having regard to the fact that the proposed goods intake building would be located closer to the adjacent residential properties to the south and the east of the site than the existing facility then adequate information should be provided to determine the potential odour generation. In the absence of such information, it therefore cannot be determined that the proposal will not generate emissions which would cause environmental pollution, would seriously injure the amenities of residential properties in the vicinity and would, therefore, be contrary to the proper planning and development of the area.

## **7.2. Appropriate Assessment**

7.2.1. The nearest Natura 2000 site is Ballyseedy Wood SAC (Site Code 002112) which is located 1.5km to the south of the appeal site.

- 7.2.2. Tralee Bay Complex SPA (Site Code 004188) is located 2.8km to the east of the appeal site. Tralee Bay and Magherees Peninsula, West to Cloghane SAC (Site Code 002070) is located 3km to the east of the appeal site.
- 7.2.3. Having regard to the nature, scale, and location of the proposed development, the nature of the receiving environment, and the separation distance to the nearest European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on any European site.

## **8.0 Recommendation**

- 8.1. I recommend that permission be refused.

## **9.0 Reasons and Considerations**

1. Having regard to the location of the proposed development relative to adjacent residential properties and the nature of use proposed, Board is not satisfied, on the basis of the submissions made in connection with the application and appeal, that the proposed development will not generate emissions which would cause environmental pollution, would seriously injure the amenities of residential properties in the vicinity and would, therefore, be contrary to the proper planning and development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Siobhan Carroll  
Planning Inspector

16<sup>th</sup> February 2024



## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	ABP 314343-22		
<b>Proposed Development Summary</b>	Construction of a goods intake building and associated works		
<b>Development Address</b>	Clash Industrial Estate, Tralee, Co. Kerry		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)	<b>Yes</b>	✓	
	<b>No</b>	No further action required	
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>			
<b>Yes</b>		Class 10(b), Schedule 5 Part 2	EIA Mandatory EIAR required
<b>No</b>	✓		Proceed to Q.3
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
		N/A	<b>Conclusion</b>
<b>No</b>			No EIAR or Preliminary Examination required
<b>Yes</b>		Class 10, (b) (iv)	Proceed to Q.4

**4. Has Schedule 7A information been submitted?**

<b>No</b>	✓	<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## Appendix 2 - Form 2

### EIA Preliminary Examination

<b>An Bord Pleanála Case Reference</b>	314343-22	
<b>Proposed Development Summary</b>	Construct a goods intake building and associated site works.	
<b>Development Address</b>	Clash, Industrial Estate, Tralee, Co. Kerry.	
<p><b>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</b></p>		
	<b>Examination</b>	<b>Yes/No/ Uncertain</b>
<p><b>Nature of the Development</b></p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>The proposal comprises the construction of a goods intake building to serve an existing permitted facility within the Industrial Estate. Accordingly, it is not exceptional in this context.</p> <p>No significant emissions resultant</p>	No
<p><b>Size of the Development</b></p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having regard to other existing</p>	<p>No, the proposal entails the construction of a 435sq m building to provide goods intake at the existing BioAtlantis premises which has an existing area of 37,450sqm.</p> <p>No significant emissions resultant of this project combined with any existing or permitted.</p>	No  No

and/or permitted projects?		
<p><b>Location of the Development</b></p> <p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>It is located over 1.5km to any ecologically sensitive sites. The site is adjacent to the Manor stream, which is a tributary of the River Lee, which is a Salmonid River. Having regard to the nature and scale of the proposed development it not envisaged that it would have the potential to significantly impact on this adjacent stream or the downstream river.</p> <p>Having regard to the nature and scale of the proposal which comprises construction of a 435sqm goods intake building at the existing BioAtlantis premises which has an existing area of 37,450sqm and is located within the Clash Industrial Estate it does not have the potential to significantly affect other significant environmental sensitivities in the area.</p>	<p>No</p> <p>No</p>
<b>Conclusion</b>		
<p><b>There is no real likelihood of significant effects on the environment.</b></p> <p>EIA not required</p>	<p><b>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</b></p> <p><del>Schedule 7A information required to enable Screening Determination to be carried out</del></p>	<p><b>There is a real likelihood of significant effects on the environment.</b></p> <p>EIA not required</p>

**Inspector:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**DP/ADP:** \_\_\_\_\_ **Date:** \_\_\_\_\_

(only where Schedule 7A information or EIAR required)